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7
8 Attorneys for Defendant:
WEN YUEH LU

FILED
DISTRICT COURT OF GUAM

JAN 11 2007 mbl

MARY L.M. MORAN
CLERK OF COURT

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF GUAM**

12
13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 WEN YUEH LU,

17 Defendant.
18

MAGISTRATE CASE NO. 06-00031

**DECLARATION OF DEFENDANT'S
COUNSEL**

19 **DECLARATION OF DEFENDANT'S COUNSEL**

20 I, DANIEL J. BERMAN, hereby declare under penalty of perjury that:

21 1. I am counsel for the Defendant Wen Yueh Lu in the above-captioned
22 action.

23 2. I make this Declaration upon personal knowledge unless otherwise stated.
24
25
26

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ORIGINAL

3 =====

4 3. A true and accurate copy of the Defendant Lu Petition for Writ of Habeas Corpus
5 filed December 22, 2006, filed as Civil Case No. CV06-00039 is attached hereto as Exhibit "1".

6 Further Declarant Sayeth Naught.

7 Dated this 11 day of January, 2007.

8
9 BY: 
10 DANIEL J. BERMAN

DEC 22 2006

Time 4:25 pm
Receiving name RC
Date keyed in Obase _____
Entered into Obase by: _____

Daniel J. Berman, Esq.
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U.S. PROBATION OFFICE

DEC 22 2006

DISTRICT OF GUAM
and NM

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DISTRICT COURT OF GUAM

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MARY L.M. MORAN
CLERK OF COURT

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Attorneys for Petitioner:
WEN YUEH LU

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF GUAM

C.A.

Civil Case

~~Special Proceedings~~ No. **06-00039**

WEN YUEH LU,

Petitioner,

vs.

**PETITION FOR WRIT OF HABEAS
CORPUS**

LEONARDO M. RAPADAS, United States
Attorney for the Territory of Guam and the
Northern Mariana Islands, JOAQUIN L.G.
SALAS, in his official capacity as the Chief
Marshal; Territory of Guam; and FRANK
MICHAEL CRUZ, in his official capacity as
Chief Probation Officer, U.S. Probation Office
for the Territory of Guam,

Respondents.

I. INTRODUCTION

1. Petitioner Wen Yueh Lu seeks a Writ of Habeas Corpus. Petitioner is

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70 11/21/2007

WVAD-31111-1510

EXHIBIT "1"

3
4
5 currently subject to an Order Setting Conditions of Release forced upon him by the United
6 States Attorney for the Territory of Guam, and such Order is also subject to enforcement
7 by the U.S. Marshal's Office Pretrial Services and supervision by the U.S. Probation Office
8 with respect to the imposed conditions of release. Prior to his release, Petitioner had been
9 arrested and incarcerated by federal authorities. Under the terms of the Order of Release,
10 Petitioner has had his passport taken away, was required to post a cash bond of \$5,000,
11 must reside at a local hotel, must stay away from all ports of entry and exit, and may not
12 leave the Island of Guam without approval of the Court. The purpose of this enforced
13 detention and loss of liberty is to require that Petitioner attend legal proceedings in the
14 misdemeanor criminal case of *United States v. Wen Yueh Lu*, Case No. MJ-06-00031, pending
15 in this Court. Thus, Petitioner has been detained, without a right to return to his residence
16 in Taiwan and pursue his occupation as a fishing captain and is, in effect, incarcerated on
17 the Island of Guam. Petitioner seeks a Writ of Habeas Corpus and an order requiring
18 Respondents to allow the unconditional release of Petitioner as is required by customary
19 rules of international law binding upon the United States. Petitioner is being detained in
20 violation of the laws of the United States.
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24

25 II. JURISDICTION

26 2. Petitioner brings this action under 28 U.S.C. § 2241 and 2242. Petitioner
27

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5 further invokes this Court's jurisdiction under 28 U.S.C. §§ 1331, 1651, 2201, and 2202.
6 Insofar as he seeks declaratory relief, Petitioner also relies on Federal Rule of Civil
7 Procedure 57.

8 3. This Court has authority under 28 U.S.C. § 2241 to grant the Writ of Habeas
9 Corpus and, under 28 U.S.C. § 2242, to entertain this Petition.
10

11 4. The Court is further empowered (a) to declare the rights and other legal
12 remedies of the parties herein by 28 U.S.C. § 2201; (b) to effectuate and enforce declaratory
13 relief by all necessary and proper means by 28 U.S.C. § 2202, as this case involves an actual
14 controversy within the Court's jurisdiction; and (c) to issue all writs necessary or
15 appropriate in aid of its jurisdiction by 28 U.S.C. § 1651.
16

17 5. Petitioner also invokes the jurisdiction of this Court pursuant to 28 U.S.C.
18 §1343 in that Petitioner seeks to redress deprivation of rights guaranteed by the
19 Constitution, laws and treaties of the United States.
20

21 6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Petitioner is
22 currently being detained on the Island of Guam.
23

24 **III. PARTIES**

25 7. Petitioner is an individual who a citizen of the Republic of China (Taiwan)
26 and is now prevented from freely leaving the Island of Guam by the Order Setting
27

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4
5 Conditions of Release entered in Case No MJ-06-00031, entered December 13, 2006. Exhibit
6 "1", attached. Petitioner is a fishing vessel captain who, while serving as the captain of the
7 MARSHALLS 201, a tuna purse seine vessel flying the flag of the Republic of the Marshall
8 Islands, has been charged with refusal to allow boarding under the Magnuson-Stevens
9 Fishery Conservation and Management Act, 16 U.S.C. § 1857(1)(D). Petitioner is currently
10 confined to the Island of Guam and is not free to leave, pending the outcome of the legal
11 proceedings against him.
12

13 8. Respondent Leonardo M. Rapadas is the U.S. Attorney for the Territory of
14 Guam and the Northern Mariana Islands. Mr. Rapadas is sued in his official capacity.
15

16 9. Respondent Joaquin L.G. Salas is the Director of the U.S. Marshal's Office for
17 the Territory of Guam. Mr. Salas is sued in his official capacity.
18

19 10. Respondent Frank Michael Cruz is the Director of the U.S. Probation Office
20 for the Territory of Guam. Mr. Cruz is sued in his official capacity.
21

22 IV. STATEMENT OF FACTS

23 11. On September 9, 2006, Petitioner was operating a tuna purse seine vessel in
24 what he believed were waters of the Exclusive Economic Zone of the Republic of Kiribati.
25 His vessel, documented under the flag of the Republic of the Marshall Islands is owned by
26 the Marshall Island Fishing Company, an entity organized under the laws of the Republic
27

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3
4 of the Marshall Islands. The vessel is the MARSHALLS 201.

5
6 12. It is alleged that enforcement officials of the U.S. Coast Guard sited the
7 fishing vessel by aircraft and then sought to arrest the MARSHALLS 201 using the buoy
8 tender WALNUT. The WALNUT is not a traditional U.S. Coast Guard "cutter", but an
9 industrial vessel built primarily to service navigational buoys at sea. The vessel is 225 feet
10 long and is configured with an aft superstructure and a large crane fixed on the main deck.
11 A copy of a recent press release describing the WALNUT and photograph of the WALNUT
12 are attached as Exhibit "2". The appearance of the WALNUT at sea resembles that of a
13 commercial vessel, not a U.S. government military vessel.
14
15

16 13. Government authorities allege that, on September 9, 2006, the MARSHALLS
17 201 was in waters claimed by the United States to be part of the Exclusive Economic Zone
18 of Howland and Baker Islands, located to the north of the Republic of Kiribati. The basis
19 of the assertion of jurisdiction was enactment in 1976 of the Magnuson-Stevens Fishery
20 Conservation and Management Act, which asserted exclusive fishery management
21 jurisdiction by the United States out to 200 nautical miles. 16 U.S.C. § 1811(a).
22

23 14. On March 7, 1977, the U.S. Department of State published a notice in the
24 Federal Register (42 Fed. Reg. 12,937) claiming jurisdiction over waters around Howland
25 and Baker Islands in accordance with certain longitude and latitude coordinates selected
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5 unilaterally by the United States. Exhibit "3". Another unilateral assertion of jurisdiction
6 over waters around Howland and Baker Islands was declared in a Federal Register notice
7 dated August 23, 1995 (60 Fed. Reg. 43,825). Exhibit "4". That notice stated that the
8 Exclusive Economic Zone around Howland and Baker Islands is "a line 200 nautical miles
9 from the baseline from which the territorial sea is measured, except to the southeast and
10 south of Howland Baker Islands the limit of the exclusive economic zone" is determined
11 by straight lines connecting a set of latitude and longitude coordinates. Exhibit "4", at p.
12 43829.
13

14
15 15. The asserted fishery management jurisdiction of the United States over water
16 around the uninhabited islands of Howland and Baker Islands abut against and, on
17 information and belief, overlap the area claimed by the Republic of Kiribati as that
18 country's exclusive economic zone. The maritime boundary between the claimed exclusive
19 economic zones around Howland and Baker Islands and the claimed exclusive economic
20 zone of the Republic of Kiribati has never been resolved by mutual agreement or
21 international adjudication. In 1977, the United States stated, at 42 Fed. Reg. 24,134 (May
22 12, 1977), that the claimed limits of the U.S. fishery management zones were without
23 prejudice to any negotiations with neighboring countries or any positions that have been
24 or may be adopted respecting the limits of maritime jurisdiction.
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5 16. At the time of the incident, the MARSHALLS 201 was in possession of a
6 license authorizing fishing activities by the vessel in waters subject to the jurisdiction of the
7 Republic of Kiribati. The Republic of Kiribati asserted its jurisdiction in May 1983 by
8 enactment of the Maritime Zones (Declaration) Act No. 7. The Republic of Kiribati also
9 acceded to the United National Convention on Law of the Sea in February 2003.
10

11 17. The act of conducting a purse seine fishing operation on the high seas to
12 capture and recover highly migratory tuna is complex. Such a vessel uses a large net,
13 approximately 3,000 meters long and 300 feet deep, weighing about 30 tons. Large skiffs
14 must be used to encircle a school of fish for recovery. These skiffs then assist as the tuna
15 are "brailed" from the net and loaded below deck in chilled compartments. The net and
16 the skiffs must then be brought on board the vessel to complete the "set." A typical "set"
17 to recover a load of tuna and can take about 3 hours and requires the strict attention of all
18 crew, in particular the captain.
19
20

21 18. It is claimed by U.S. government enforcement officials that the WALNUT
22 "pulled along side" the MARSHALLS 201 while it was bringing in its fishing gear, at
23 approximately 1027 hours. It is alleged that, at that time on September 9, the fishing vessel
24 was 1.9 nautical miles within the U.S. exclusive economic zone around Howland and Baker
25 Islands. It is then alleged that, despite attempting to contact the captain by radio, the
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5 WALNUT was unable to contact the captain and the vessel began to "flee south."

6 19. It is alleged by U.S. government enforcement officials that, at 1040 hours, the
7 WALNUT hauled up a flag hoist signal "LIMA" and sounded the signal "LIMA" with the
8 WALNUT's whistle. It is then alleged that the MARSHALLS 201 come to a complete stop
9 at 1100 hours, exactly 33 minutes after it was alleged that the WALNUT "pulled along
10 side" the MARSHALLS 201.
11

12 20. Following boarding, the MARSHALLS 201 was seized and escorted to Guam
13 where it was arrested by the U.S. Marshal's Office pursuant to a warrant of arrest dated
14 October 4, 2006. The United States Attorney's Office also filed a complaint for the
15 forfeiture of the MARSHALLS 201 for violations of the Magnuson-Stevens Fishery
16 Conservation and Management Act. *U.S. v. MARSHALLS 201*, Civil Case No. 06-00030
17 (D.Guam).
18

19 21. The arrest of the MARSHALLS 201 resulted in the issuance of a formal
20 protest by the Republic of the Marshall Islands, dated December 13, 2006, attached as
21 Exhibit "5".
22

23 22. On October 13, 2006, the MARSHALLS 201 was released upon the filing of
24 a bond in the amount of \$2,950,000.00.
25

26 23. Immediately following the filing of the bond, the MARSHALLS 201 and all
27

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5 of its crew, including Petitioner, were granted the right of free departure from the Island
6 of Guam and the United States.

7 24. On December 6, 2006, following issuance of an Order denying Plaintiff's
8 Motion to Quash Discovery (entered November 30, 2006), Petitioners arrived on Guam to
9 provide a testimony preservation deposition. A representative of the U.S. Attorney's
10 Office participated in the deposition in the civil forfeiture case and fully cross examined
11 Petitioner with respect to the incident. The deposition concluded in the afternoon on
12 December 8, 2006.
13

14 25. On December 9, 2006, when Petitioner was in the departure area of the Guam
15 International Airport, he was arrested by federal government authorities and incarcerated
16 in Hagatna, Guam prison. The United States Attorney's Office filed a criminal complaint
17 against Petitioner for refusal to allow boarding under the Magnuson-Stevens Fishery
18 Conservation and Management Act, specifically 16 U.S.C. § 1857(1)(D). It is charged that
19 Petitioner "did knowingly and willfully refuse to permit United States Coast Guard officers
20 of the USCG Cutter Walnut to board the Marshalls 201 for purposes of conducting a search
21 and investigation" of alleged fishing violations in the U.S. exclusive economic zone. It is
22 also alleged in the complaint that Petitioner is subject to the special maritime and territorial
23 jurisdiction of the United States, as defined in 18 U.S.C. § 7(1).
24
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5 26. On December 9, 2006, Petitioner was arraigned and pleaded not guilty to the
6 criminal charge, which is a Class B misdemeanor. Government authorities have filed
7 statements in both this criminal case and in the civil forfeiture case confirming that
8 Petitioner did in fact stop the MARSHALLS 201 and allow enforcement officials to conduct
9 an inspection, which then led to its arrest. Prior to December 8, 2006, U.S. government
10 enforcement officials had filed no civil or other charges against Petitioner for the incident
11 on September 9, 2006.
12

13 27. On December 13, 2006, the Order Setting Conditions of Release was entered,
14 preventing Petitioner from being released unconditionally, ordered the payment of a
15 \$5,000.00 bond and prohibited from leaving the Island of Guam. Exhibit "1".
16

17 **V. APPLICABLE LAW**

18 28. The applicable statutory provision, part of the fishery management laws of
19 the United States, reads, in relevant part, as follows:
20

21 It is unlawful —

22 (1) for any person —

23 (D) to refuse to permit any officer authorized to enforce the
24 provisions of this Act ...to board a fishing vessel subject to
25 such person's control for the purposes of conducting any
26 search or inspection in connection with the enforcement of this
27 Act or any regulation, permit...

3
4
5 16 U.S.C. § 1857(1)(D).

6 29. Commission of an act prohibited by 16 U.S.C. § 1857(1)(D) is a criminal
7 offense. 16 U.S.C. § 1859(a).

8 30. Conviction of the prohibited act of failure to allow boarding is punishable by
9 a fine, or imprisonment of not more than 6 months, unless the conduct involves use of a
10 dangerous weapon, caused bodily injury or places an observer or officer in fear of
11 imminent bodily harm.

12
13 31. The United Nations Law of the Sea Treaty ("LOS Treaty") has been ratified
14 by 152 nations as of October 23, 2006. The Republic of the Marshall Islands and the
15 Republic of Kiribati have acceded to the LOS Treaty and are bound by its terms.

16
17 32. Article 73.2 of the LOS Treaty states that "[a]rrested vessels and their crews
18 shall be promptly released upon the posting of reasonable bond or other security." The
19 plain text of this Article mandates a prompt unconditional release, not a release with
20 conditions.

21
22 33. Article 73.3 of the LOS Treaty states that "Coastal State [i.e. in this case the
23 United States] penalties for violations of fisheries laws and regulations in the exclusive
24 economic zone may not include imprisonment, in the absence of agreements to the contrary
25 by the States concerned, or any other form of corporal punishment."

3
4
5 34. Article 73 of the LOS Treaty is binding on the United States as a matter of
6 customary international law and Article 18 of the Vienna Convention on the Law of
7 Treaties. The President of the United States has submitted the LOS Treaty to the United
8 States Senate for ratification, indicating the intention of the United States to be bound by
9 its terms. *Lauritzen v. Larsen*, 354 U.S. 571, 581-82 (1953); *U.S. v. Royal Caribbean Cruises, Ltd.*,
10 11 F.Supp.2d 1358, 1369-1374 (S.D.Fla. 1998); *U.S. v. Royal Caribbean Cruises, Ltd.*, 24
11 F.Supp.2d 155, 159-160 (D.Puerto Rico 1997); *United States v. Kun Yun Jho*, 2006 WL 3488952
12 (E.D.Texas; Dec. 4, 2006).
13

14
15 **FIRST CAUSE OF ACTION**

16 **Failure to Release Petitioner Unconditionally;**
17 **Violation of Customary International Law**

18 35. Petitioner incorporates by reference Paragraphs 1-34.

19 36. Petitioner has been arrested and charged with a violation of the fisheries laws
20 of the United States applicable to a maritime area alleged to be the exclusive economic zone
21 of the United States.
22

23 37. Petitioner has posted the bond, \$5,000, for his release.

24 38. Respondents have imposed conditions on Petitioner's release that prevent
25 him from leaving the Island of Guam and returning to his residence in the Republic of
26 Taiwan and from pursuing his livelihood.
27

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5 39. Article 73.2 of the LOS Treaty, binding on the United States as a rule of
6 customary international law, requires that Petitioner be released unconditionally after
7 posting a reasonable bond in cases involving violations of the fisheries laws of the United
8 States in the exclusive economic zone.

9
10 40. Therefore, the conditions for release set forth in the Order Setting Conditions
11 of Release are unlawful and cannot be imposed on Petitioner.

12 **SECOND CLAIM FOR RELIEF**

13 **Threat of Imprisonment; Violation of Customary International Law**

14 41. Petitioner incorporates by reference Paragraphs 1-40.

15
16 42. Petitioner has been charged with a violation of U.S. law, 16 U.S.C. §
17 1857(1)(D) that could be punished by a term of imprisonment of not more than six months.
18 This statutory provision is part of the fisheries laws of the United States applicable in the
19 exclusive economic zone.

20
21 43. Article 73.3 of the LOS Treaty, binding on the United States as a rule of
22 customary international law, prohibits imprisonment of any individual for violations of
23 fisheries laws or other form of corporal punishment, except pursuant to agreements with
24 the relevant country, in this case the Republic of the Marshall Islands, the flag nation for
25 the MARSHALLS 201. The Republic of the Marshall Islands has not agreed to allow the
26

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4
5 United States to imprison any of the crew serving on fishing vessels that are registered in
6 the Republic of the Marshall Islands.

7 44. The United States may not impose any sanction on Petitioner that includes
8 imprisonment.

9 45. Petitioner seeks a declaration from this Court that, even if the United States
10 could establish that it has jurisdiction and that Petitioner failed to stop (which is denied),
11 no penalty of imprisonment can be imposed.
12

13 **REQUEST FOR RELIEF**

14 WHEREFORE, Petitioner requests for relief as follows:

15 46. Grant the Writ of Habeas Corpus.

16 47. Enter an order enjoining Respondents from enforcing the terms of the Order
17 Setting Conditions of Release with respect to Petitioner.
18

19 48. Enter an order requiring that Respondents release Petitioner unconditionally
20 now that he has posted a reasonable bond.
21

22 49. Enter an order finding that, in any event, Petitioner can never be imprisoned
23 on the basis of the charges made against him by the United States.
24


25 50. Grant such other and further relief as the Court may deem necessary and
26 appropriate to protect Petitioner's rights, including an award of attorney's fees and costs.
27

3
4 Dated this 22 day of December, 2006.

5
6 Respectfully submitted,

7 Attorneys for Petitioner:
8 WEN YUEH LU

9
10 By:



11 **DANIEL J. BERMAN**
12 **MARK S. SMITH**

FILED
Page 1 of 3 Pages
DISTRICT COURT OF GUAM
DEC 13 2006
MARY L.M. MORAN
CLERK OF COURT

UNITED STATES DISTRICT COURT

_____ District of GUAM

United States of America

V.

WEN YUEH LU

Defendant

**ORDER SETTING CONDITIONS
OF RELEASE**

Case Number: **MJ-06-00031**

IT IS ORDERED that the release of the defendant is subject to the following conditions:

- (1) The defendant shall not commit any offense in violation of federal, state or local law while on release in this case.
- (2) The defendant shall immediately advise the court, defense counsel and the U.S. attorney in writing before any change in address and telephone number.
- (3) The defendant shall appear at all proceedings as required and shall surrender for service of any sentence imposed as directed. The defendant shall appear at (if blank, to be notified) DISTRICT COURT OF GUAM
Place
U.S. COURTHOUSE on FEBRUARY 2, 2007 AT 9:30 A.M.
Date and Time

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released provided that:

- (☒) (4) The defendant promises to appear at all proceedings as required and to surrender for service of any sentence imposed.
- (☐) (5) The defendant executes an unsecured bond binding the defendant to pay the United States the sum of _____ dollars (\$ _____)
in the event of a failure to appear as required or to surrender as directed for service of any sentence imposed.

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICES U.S. ATTORNEY U.S. MARSHAL

Additional Conditions of Release

Upon finding that release by one of the above methods will not by itself reasonably assure the appearance of the defendant and the safety of other persons and the community.

IS FURTHER ORDERED that the release of the defendant is subject to the conditions marked below:

(X) (6) The defendant is placed in the custody of:

(Name of person or organization) TAI LI HU

(Address) 1448 PALE SAN VITORES ROAD, ROOM 203, TUMON BAY CAPITOL HOTEL

(City and state) TUMON, GUAM (Tel. No.) (671) 646-3903

agrees (a) to supervise the defendant in accordance with all the conditions of release, (b) to use every effort to assure the appearance of the defendant at all scheduled court proceedings, and (c) to notify the court immediately in the event the defendant violates any conditions of release or disappears.

Signed: _____

Custodian or Proxy

Date

12/13/2006

(X) (7) The defendant shall:

(X) (a) report to the U.S. PROBATION OFFICE,

telephone number 473-9201, not later than AS DIRECTED.

(X) (b) execute a bond or an agreement to forfeit upon failing to appear as required the following sum of money or designated property:

\$5,000.00 CASH

() (c) post with the court the following indicia of ownership of the above-described property, or the following amount or percentage of the above-described

() (d) execute a bail bond with solvent sureties in the amount of \$ _____.

() (e) maintain or actively seek employment.

() (f) maintain or commence an education program.

(X) (g) surrender any passport to: U.S. DISTRICT COURT OF GUAM

(X) (h) obtain no passport.

(X) (i) abide by the following restrictions on personal association, place of abode, or travel:

MAINTAIN A FIXED RESIDENCE

() (j) avoid all contact, directly or indirectly, with any persons who are or who may become a victim or potential witness in the subject investigation or prosecution, including but not limited to: _____

() (k) undergo medical or psychiatric treatment and/or remain in an institution as follows: _____

() (l) return to custody each (week) day as of _____ o'clock after being released each (week) day as of _____ o'clock for employment, schooling, or the following limited purpose(s): _____

() (m) maintain residence at a halfway house or community corrections center, as deemed necessary by the pretrial services office or supervising officer.

(X) (n) refrain from possessing a firearm, destructive device, or other dangerous weapons.

() (o) refrain from () any () excessive use of alcohol.

(X) (p) refrain from use or unlawful possession of a narcotic drug or other controlled substances defined in 21 U.S.C. § 802, unless prescribed by a licensed medical practitioner.

() (q) submit to any method of testing required by the pretrial services office or the supervising officer for determining whether the defendant is using a prohibited substance. Such methods may be used with random frequency and include urine testing, the wearing of a sweat patch, a remote alcohol testing system, and/or any form of prohibited substance screening or testing.

() (r) participate in a program of inpatient or outpatient substance abuse therapy and counseling if deemed advisable by the pretrial services office or supervising officer.

() (s) refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or electronic monitoring which is (are) required as a condition(s) of release.

() (t) participate in one of the following home confinement program components and abide by all the requirements of the program which () will or () will not include electronic monitoring or other location verification system. You shall pay all or part of the cost of the program based upon your ability to pay as determined by the pretrial services office or supervising officer.

() (i) Curfew. You are restricted to your residence every day () from _____ to _____, or () as directed by the pretrial services office or supervising officer; or

() (ii) Home Detention. You are restricted to your residence at all times except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits; court appearances; court-ordered obligations; or other activities as pre-approved by the pretrial services office or supervising officer; or

() (iii) Home Incarceration. You are restricted to your residence at all times except for medical needs or treatment, religious services, and court appearances pre-approved by the pretrial services office or supervising officer.

() (u) report as soon as possible, to the pretrial services office or supervising officer any contact with any law enforcement personnel, including, but not limited to, any arrest, questioning, or traffic stop.

(X) (v) DO NOT LEAVE GUAM WITHOUT PERMISSION OF THE COURT AND THE U.S. PROBATION OFFICE.

(X) (w) STAY AWAY FROM ALL PORTS OF ENTRY AND EXIT.

() (x)

Advice of Penalties and Sanctions

TO THE DEFENDANT:

YOU ARE ADVISED OF THE FOLLOWING PENALTIES AND SANCTIONS:

A violation of any of the foregoing conditions of release may result in the immediate issuance of a warrant for your arrest, a revocation of release, an order of detention, and a prosecution for contempt of court and could result in a term of imprisonment, a fine, or both.

The commission of a Federal offense while on pretrial release will result in an additional sentence of a term of imprisonment of not more than ten years, if the offense is a felony; or a term of imprisonment of not more than one year, if the offense is a misdemeanor. This sentence shall be in addition to any other sentence.

Federal law makes it a crime punishable by up to 10 years of imprisonment, and a \$250,000 fine or both to obstruct a criminal investigation. It is a crime punishable by up to ten years of imprisonment, and a \$250,000 fine or both to tamper with a witness, victim or informant; to retaliate or attempt to retaliate against a witness, victim or informant; or to intimidate or attempt to intimidate a witness, victim, juror, informant, or officer of the court. The penalties for tampering, retaliation, or intimidation are significantly more serious if they involve a killing or attempted killing.

If after release, you knowingly fail to appear as required by the conditions of release, or to surrender for the service of sentence, you may be prosecuted for failing to appear or surrender and additional punishment may be imposed. If you are convicted of:

- (1) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, you shall be fined not more than \$250,000 or imprisoned for not more than 10 years, or both;
- (2) an offense punishable by imprisonment for a term of five years or more, but less than fifteen years, you shall be fined not more than \$250,000 or imprisoned for not more than five years, or both;
- (3) any other felony, you shall be fined not more than \$250,000 or imprisoned not more than two years, or both;
- (4) a misdemeanor, you shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

A term of imprisonment imposed for failure to appear or surrender shall be in addition to the sentence for any other offense. In addition, a failure to appear or surrender may result in the forfeiture of any bond posted.

Acknowledgment of Defendant

I acknowledge that I am the defendant in this case and that I am aware of the conditions of release. I promise to obey all conditions of release, to appear as directed, and to surrender for service of any sentence imposed. I am aware of the penalties and sanctions set forth above.

CU. WEN - YUEH

Signature of Defendant

ROOM 203

Address

CAPITAL HOTEL TUMON

City and State

Telephone

646-3903

Directions to United States Marshal

- ☐ The defendant is ORDERED released after processing.
- ☒ The United States marshal is ORDERED to keep the defendant in custody until notified by the clerk or judge that the defendant has posted bond and/or complied with all other conditions for release. The defendant shall be produced before the appropriate judge at the time and place specified, if still in custody.

Date: 12/13/2006

J. V. E. Manibusan, Jr.

Signature of Judicial Officer

JOAQUIN V.E. MANIBUSAN, JR., MAGISTRATE JUDGE

Name and Title of Judicial Officer

DISTRIBUTION: COURT DEFENDANT PRETRIAL SERVICE U.S. ATTORNEY U.S. MARSHAL